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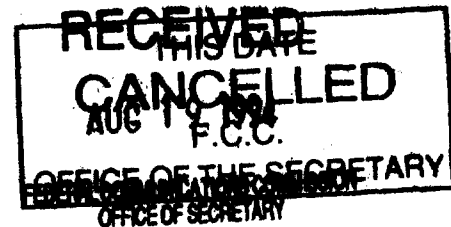
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August 22, 1994

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OUR FILE NO.
1228-101-61

Mr. William F. Caton
Acting Secretary

Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C.

AUG 22 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

RE: Implementation of Section 309(j) of the Communications
Act -- Competitive Bidding, *Fifth Report and Order*
Petition for Reconsideration

Dear Sir/Madam:

Enclosed herewith, on behalf of the National Paging and Personal
Communications Association, are an original and four copies of a Petition for
Reconsideration of the above-referenced *Fifth Report and Order*.

If there are any questions concerning this matter, please contact this
office directly.

Sincerely yours,

Amelia L. Brown

ALB:dh
Enclosures (5)

Before The
Federal Communications Commission
 Washington, D.C. 20554

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 AUG 22 1994
 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF SECRETARY

In The Matter Of)
)
 Implementation of Section 309(j))
 of the Communications Act --)
 Competitive Bidding)
)

Docket No. PP 93-253
 FCC 94-178

RECEIVED

TO: The Commission

AUG 22 1994

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF SECRETARY

Petition For Reconsideration

The National Paging & Personal Communications Association ("NPPCA"), by its attorneys and pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, hereby submits this Petition for Reconsideration with respect to certain actions taken by the Commission in the *Fifth Report and Order*¹ in the above-captioned proceeding ("*Fifth Report*"). In support hereof, the following is shown:

I. IDENTITY AND INTEREST

NPPCA is a newly-formed, national, non-profit trade association headquartered in Washington, D.C. NPPCA's members are small businesses and businesses owned by minorities and women. One of its main objectives is to assist new and existing small businesses with

¹ FCC 94-178, released July 15, 1994. The *Fifth Report* was published in the Federal Register on July 22, 1994. FEDERAL REGISTER, 59 F.R. 37566 (Daily ed. July 22, 1994). Accordingly, this Petition for Reconsideration is timely-filed within the next succeeding thirty-day period. See 47 C.F.R. § 1.106(f).

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[Signature]

financing, technical assistance and business support services so that they may enter the wireless telecommunications marketplace.

NPPCA seeks interconnection between the industry leaders and the newcomers to the telecommunications field. It believes that this link is important to meeting the legislative mandate of the 1993 Omnibus Budget Reconciliation Act, in that industry must invest in, and encourage the advancement of, small, minority- and female-owned businesses seeking to participate in the ownership of PCS.

On August 5-7, 1994, NPPCA held its first annual conference in Washington, D.C., designed specifically for minorities, women, and small businesses interested in becoming licensees of broadband PCS stations and/or participating as investors in broadband PCS bidding entities. Participants included venture capitalists, successful bidders in the recent auctions of IVDS licenses, cellular and paging resellers and agents, and others involved in the telecommunications equipment and computer industries. Among the speakers were representatives of AT&T, the FCC, Motorola, Northern Telecom, and the Small Business Administration.

II. STATEMENT OF POSITION

NPPCA believes that the preferences accorded Designated Entities by the *Fifth Report* are insufficient to ensure that small businesses and businesses owned by women and/or minorities will be able meaningfully to participate in the broadband PCS auctions.

NPPCA thus urges the Commission to revisit its treatment of Designated Entities.

Although NPPCA acknowledges the Commission's efforts in the *Fifth Report* to provide opportunities for Designated Entities to participate in the delivery of broadband PCS, it believes even more needs to be done to increase the ability of these groups to compete actively against larger, more established entities. As NPPCA noted in its comments to the FCC's PCS Task Force on March 30, 1994, equity and fairness in competitive bidding can only be achieved by matching contestants of equal size and strengths.²

Consequently, NPPCA seeks the following changes to the broadband PCS auction rules:

- 1) The bidding credit for all small businesses, women and minorities ("Designated Entities") bidding in the Entrepreneurs' Blocks should be increased to 50 percent;
- 2) the annual revenues cap establishing which entities may bid in the Entrepreneurs' Blocks should be decreased to a maximum of \$75 million; and
- 3) the Entrepreneurs' Blocks in the BTA markets should be auctioned before the MTAs are auctioned.

All of these measures will result in a licensing procedure that makes more realistic the possibility that Designated Entities will have

² See Report to the FCC's PCS Task Force, submitted by NPPCA, March 30, 1994, at 5.

a fair opportunity to become licensees of broadband PCS systems and participate in the delivery of broadband PCS.

III. REQUEST FOR RECONSIDERATION

A. Raise Bidding Credit to 50 Percent

In the *Fifth Report*, the Commission adopted a bidding credit plan for winning bidders in the Entrepreneurs' Blocks (Blocks C and F of broadband PCS spectrum)³ that gives small businesses a 10 percent credit, women and minority-owned businesses a 15 percent credit, and small businesses owned by women and minorities an aggregate credit of 25 percent.⁴ NPPCA urges that this amount be increased to 50 percent for all Designated Entities bidding on the Entrepreneurs' Blocks, without differentiation. This bidding credit will allow Designated Entities an improved shot at competing for a license against far wealthier businesses seeking those licenses.

In the *Fifth Report*, the Commission recognized that it would not make sense to offer bidding credits to Designated Entities bidding outside of the Entrepreneurs' Blocks because the capital intensive nature of broadband PCS would result in Designated Entities losing to very large entities anyway.⁵ The same logic prevails in the current situation. As the rules currently exist, any entity, regardless of who owns it, may bid in the Entrepreneurs' Blocks so long as the entity's gross revenues in each of the previous two years are less than \$125

³ *Fifth Report*, ¶ 121.

⁴ *Id.*, ¶ 130.

⁵ *Id.*, ¶ 121.

million and their total assets are less than \$500 million.⁶ In contrast, a small business was defined in the *Fifth Report* as any firm, together with its attributable investors and affiliates, with average gross revenues for the three preceding years not in excess of \$40 million.⁷ Thus, a firm with no more than \$40 million in gross revenues would be competing against a firm with total assets of up to \$500 million. Under the current plan, the only advantage the small firm would have over the larger firm bidding in the Entrepreneurs' Blocks is that the small business is entitled to a 10 percent bidding credit. The 10 percent bidding credit is a gratuitous gesture, lacking any practical effect. It should be increased five-fold if it is to operate at all as it is intended -- to give truly small businesses a fighting chance in the auctions for broadband PCS.

The need to increase the bidding credit for minority- and female-owned businesses as well is underscored by the fact that of the 10 licenses for nationwide narrowband service auctioned in July, none went to businesses owned by minorities or women.⁸ Realizing that the small, female- and minority-owned businesses need more of an advantage in competing against larger firms, on August 17, 1994, the FCC changed the bidding credit for 10 of the 30 regional licenses for narrowband PCS from 25 percent for minority- and female-owned businesses to 40 percent.⁹ With more spectrum allocated to

⁶ *Id.*

⁷ *Id.*, ¶ 175.

⁸ *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* (PP Docket 93-253 & GEN Docket No. 90-314), FCC 94-219, released August 17, 1994, ("*Third Memorandum Opinion and Order*") at ¶ 58.

⁹ *Id.*; and *id.*, Appendix Rules, 47 C.F.R. § 24.129(b).

broadband PCS licenses than to narrowband PCS, with correspondingly greater costs, the need to create real incentives to attract successful bidding by Designated Entities is even greater for broadband PCS than it is in narrowband PCS auctions.

**B. Decrease the Financial Cap for Firms Entitled to Bid in
Entrepreneurs' Blocks**

As explained previously, the current financial caps on the firms that are eligible to bid on the Entrepreneurs' Blocks are insufficient to allow Designated Entities to compete effectively for PCS licenses. Lowering the ceiling on the financial size of companies entitled to bid on the Entrepreneurs' Blocks will increase greatly the ability of truly small businesses, including those owned by women and minorities, to compete for licensing in these blocks.

Congress' objective in requiring that Designated Entities be given a meaningful opportunity to participate in the delivery of new telecommunications technologies was diversity and, through diversity, greater competition. The incentives the Commission has already agreed to provide to Designated Entities are a good step in the right direction, but more needs to be done to ensure that those incentives are realistic and that new players are able to enter the market.¹⁰

¹⁰ Although minorities have become owners of commercial broadcasting stations and have been active in wireless cable, the Commission has acknowledged that "women and minorities have not gained substantial ownership representation in either the broadcast or non-broadcast telecommunications industries." *Third Memorandum Opinion and Order*, ¶ 70. In fact, the *Third Memorandum Opinion and Order* paints a dismal picture of minority and female representation in the telecommunications field. One study, commissioned by the U.S. Department of Commerce's Minority Business Development Agency in 1991, "found that only one

With so many companies eligible, the current caps are essentially meaningless. Indeed, they only encourage mid-to large-size companies to forebear from competing in Blocks A, B, D and E. Instead, they will bid against the smaller companies in the Entrepreneurs' Blocks. Clearly Congress did not intend for this to occur. For these reasons, a firm seeking to bid in the Entrepreneurs' Blocks should have no more than \$75 million in gross revenues for each of the two preceding years and its total assets should not exceed \$250 million.

C. Auction BTA Licenses Before MTA Licenses

The Commission intends to auction licenses in the Major Trading Areas before auctioning licenses in the Basic Trading Areas.¹¹ The FCC believes that if "block C is auctioned after blocks A and B [MTA blocks], . . . non-designated entities who are unsuccessful in acquiring MTA licenses on blocks A and B will want to become partners with or make investments in designated entities so as to gain an interest in 30 MHz licenses in block C."¹² However, NPPCA believes Designated Entities will be better served if the licenses in the BTAs are auctioned first because there will be an incentive for larger non-

half of one percent of the telecommunications firms in the country were minority owned." *Id.* The most recent Census Data indicate that "only 24 percent of the communications firms in the country were owned by women, and these women-owned firms generated only approximately 8.7 percent of the revenues earned by communications companies." *Id.* Similarly, small businesses "have not become major participants in the telecommunications industry." *Id.* at ¶ 71.

¹¹ *Fifth Report*, ¶ 7.

¹² *Id.*, ¶ 39.

Designated Entities to invest in, or partner with, Designated Entities earlier in the process.

The auction sequence adopted by the Commission has had the opposite effect of what was intended. The large companies that could assist with Designated Entities financing are holding back and waiting for the auctions on Blocks A and B before they will pursue discussions with Designated Entities. Presumably, if they lose, they will then negotiate with Designated Entities. If the FCC auctioned Blocks C and F first, however, large companies would have an incentive to seek Designated Entities as partners so as not to lose their opportunity to participate in PCS.

In addition, auctioning of the MTAs before auctioning the BTAs will give the large companies winning in Blocks A and B a competitive advantage through a head start to market. Thus, not only are the companies winning Blocks A and B likely to have the advantage of existing infrastructure, cash flow, and a larger geographic service area compared to Designated Entities, but also they will be able to proceed to market first. The FCC must not add this regulatory advantage to the many economic advantages the large companies already have.

IV. CONCLUSION

Congress' goal of diversity in licensing the spectrum for new technologies will be better achieved through the steps outlined in this Petition for Reconsideration. Specifically, a higher bidding credit will provide more incentive and wherewithal for truly smaller firms and

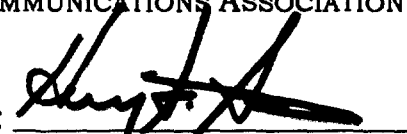
firms owned by those who have not participated in mobile telecommunications to compete for broadband PCS licenses; a lower ceiling on company's net worth and gross revenues will limit the Entrepreneur's Blocks to more nearly small businesses; and, auctioning BTA licenses in the Entrepreneurs' Blocks before MTA licenses will provide the early incentive for larger, more established companies to invest in small and minority- or female-owned businesses.

WHEREFORE, THE PREMISES CONSIDERED, the National Paging and Personal Communications Association respectfully requests that the Commission reconsider its broadband PCS auction rules as indicated above.

Respectfully submitted,

NATIONAL PAGING AND PERSONAL
COMMUNICATIONS ASSOCIATION

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